1941. K **File No.** O. Misc. /41.

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Miscellaneous Opinions

given in the year, 1941.

P 23 E

File No. O. Misc. /41

Std. Sectt. Slip 24 B a.

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V.V.K.
20/4/1956.

Office of the R.L.A.

The Landing and Wharfage Fund Committee is not a statutory committee constituted under any enactment. It is merely an advisory body constituted by Government to advise the Collector of Salt Revenue, Bombay, and its constitution is fixed by Government under executive orders by G.G.R.D. No. 1632/C ; dated the 12th May 1938 , as modified by G.G.R.D No. 1632/C , dated the 26th September 1938 and G.G.R.D. No. 1632/C , dated the 8th March 1939. Under the constitution so fixed, Government has directed that one of the members of the Committee shall be a member of the District Local Board, Ratnagiri, elected by that body.It is therefore clear that the appointemnt of Mr. Joglekar on the committee was not made under any provision of the Bombay Local Boards Act, 1923. Sub-section (1) of section 38 of this Act provides that the Board can appoint executive committees other than the Standing Committee or the Public Health Committee or appoint any member or honorary or stipendiary officer of the Board to exercise the owers and perform and perform theduties of the local board in respect of any purpose. Under sub-section (4) of this section the Bard can at any time withdraw any of thee powers or duties which any person has been appointed under the section to exercise or perform. In this case however Mr. Joglekar was not appointed to exercise any powers or duties of the local board under theAct. The rovisions of section 38 therefore have no application to the present case. That bing so, the contention of the District Local Board has no force and there are no grounds for reconsiderinr the opinion of the Remembrancer of Legal Affairs No. 9119-A, dated the 16th Octobe 1940.

V.V.K.
18/4/55.

2. The opinions given by the Remembrancer of Legal Affairs are for the information of Government and its officers. The Collector of Salt Revenue should not therefore have sent copy of the Remembrancer of Legal Affairs' opinion No.9119-A dated the 16th October 1940 to the District Local Board.

Sd/-
O.C.
For Remembrancer of Legal Affairs.

Sd/- G.R.P.
25/1

U.R. to the R.D., No. 801 dted the 28th January 1941.

V.V.K.
18/4/56.

Office of the T.L.A.

The question for the T.L.A.'s considration is whether the action of the Vai Municipality in levying fees from all out-patients residing outside Municipal limits is justifiable.

2. The dispensary maintained by theVai Municipality is a State-aided dispensary. Consequently the Vai Municipality is bound to observe t e ru'es sanc'i ned by Government for the Regulation of Government-Aided Charitable Dis ensaries, 1928 (see rule 15(c) of these Rules). Under rule 34(3) the medical officer has to conform to the rules regulations thelevy of fees in Government and State-Aided Dispensaries. Rule 8 of the rules given in Appendi- III lays down inter alia that all out- atients other than thse specifically mentioned in that rule and in rule 8 ill be charged a fee of not less than one anna and not exceeding two annas per head per day at State-aided dispensaries. The rule no doubt rovides t at in the c. se of State-aided dispensaries the levy of fees on out-patients shall not be obligatory but optional at he discretion of thelocal body concerned, but it does not give thelocal bod- any power t discriminate on score of residence and levy fees only on those out-patients who happen to reside outside its area. Consequentl- the action of the Vai Municipality in levying fees only on thebut-patients residing beyond the Muncipal area is clearly in contravention of ru e 5 of the rules in Appendix III. The view taken by the Secretry, C.D. at pages 134-135 ante is corr ct.

O.C. Sd/-
For Remembrancer of Legal Affairs.

U.R. to G.D. No. 808 , dated the 30th January 1941.

V.V.K.
18/4/66.

Office of the R.L.A.

There is at present no good or comprehensive book on "Land Tenures" in the Province of Bombay. Both Dandekar's Land Tenures and Joglekar's Alienation Manual are very old publications. The former was published in 1912 and the latter in 1921. Phadnis' Watan Act and Phadnis Law of Saranjams which were published in 1936 do not deal with all the tenures which prevail in this Province. As stated by Mr. Dandekar in the preface to his book "The law of Land tenures in India is a difficult and unintelligible breach of law, and is a slow growth of Centuries" Questions relating to land tenures are generally of a very complicated nature and L.D. fees considerably handicapped for want of a good treatise on the subject. A comprehensive book dealing with Land Tenures and Alienations is not only necessary but urgently needed. Mr. Dhurandhar with his long experience in L.D. and his knowledge of land tenures is well fitted to prepare a treatise on these subjects. Government should not therefore wait till the termination of the war but should ask Mr. Dhurandhar to prepare as soon as possible an upto date and comprehensive book on Land Tenures and Alienations, which may then be published as a Government publication.

Sd/- P.N.M.
O.C. 21/3
For Remembrancer of Legal Affairs.

Sd/-

U.S. to R.D., No 288= dated the 29th March 1041.

L.V.K.
13/4/86.

Office of the A.L.A.

It is a well known doctrine that in default of any kno n relatives, the property of an intestate is claimed by the State itself and goes as bona vacantia to the Crown (Salmond's Jurisprudence, p, 476). This principal is given statutory recognition by section 174 of the Government of India Act,1935, which provides that subject asherein after provided, any property in India accruing to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner, shall if it is property situate in a Province, vest in His Majesty for the purposes of the Government of that Province and shall in any other case vest in His Majesty for the purposes of the government of the Federation. There is no procedure prescribed in any Act by which the deceased can be declared to have died intestate and hairless. Government has however prescribed ~~in the~~ the following procedure by an administrati e order contained in Government Resolution No. 2607, dated the 15th December 1888 (see Gupte's Land Revenue Code 2nd Edn. 1937 ,p.552)

Where there is no heir, assignee or other person claiming through the deceased intestate the roperty lapses to the Crown by escheat and not by virtue of Regulation VIII of 1827. The Collector may receive charge of such property on behalf of the Crown and if any heir subsequently appears Government would be responsible to him. But there is no necessity for a sale by the court, nor can theproperty be sold if the Collector claimed that he was entitled to reciete charge of the property on behalf of the Crown. However , to be safe the High Court might be moved to direct under section 10,clause 4 of the Bombay Regulation VIII of 1827 that such property should continue under the management of an administrator, until such period had elapsed as would render the chance of any claim being preferred infinitesimal small and Government might then, through the Collector

put in their claim to the property as having passed to His Majesty by escheat*

The specific provisions dealing with the property left by a person who dies intestate without known heirs are :-

(1) Section 10 of the Bombay Regulation VIII of 1827.

(2) Section 19 of the Bombay Village Police Act, 1867.

(3) Section 72 of the Bombay Land Revenue Code.

(4) Section 58 of the Bombay District Police Act, 1890.

(5) Section 48 of the Bombay City Police Act, 1902.

Sd/- .N.M.
7/4
O.C.
For Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 3205 , dated the 9th April 1941.

V.V.K.
18/4/56.

Office of the S.L.A.

The statutory obligations of the Calcutta Corporation in regard to essential services include those imposed by the following sections of the Calcutta Municipal Act, 1923:-

(i) Section 216- to provide a supply of filtered and unfiltered water in the city;

(ii) Section 317- to provide suitable hydrants for street watering, fire-extinguishing and flushing of Municipal drains, etc.

(iii) Section 331(1) -to supply filtered water to ships leaving the port of Calcutta for use on the voyage

(iv) Section 346- to make and keep in repair all Municipal drains for effectually draining Calcutta;

(v) Section 351 - to provide a safe and sufficient outfall for the proper discharge of the storm-water and sewage;

(vi) Section 367- to provide and maintain privies and urinals for the use of the public;

(vii) Section 396- to maintain and repair public streets (including the construction and maintenance of bridges, causeways and culverts),

(viii) Section 366- to provide for lighting of public streets squares, gardens, markets and buildings,

(ix) Sections 371 -373- to provide public receptacles, depots and places for disposal of rubbish, offensive matter, sewage and the carcasses of dead animals and for the collection and removal there of;

(x) Sections 418 - to provide for inspection of all animals, food, milk and drugs intended for human consumption exposed for sale, and

(xi) Chapter XXX - Measures to prevent infection.

2. The copy of Bengal Code, 6th Edition, Volume IV, which is sent herewith may please be returned to this office as soon as done with.

D.C. Sd/-
14/6
For Remembrancer of Legal Affairs.

..V.E. 18/4/56. D.O. to Secy. H.D. No. 34- , dated 16th June 1941.

Office of the C.L.A.

In Said Vs. Butt McCardie observed " A theatre stands on a wholly different footing from a public inn or public service such as railway . A public inn , for example, is under a common law duty to supply to all who come provided that accommodation exists, and provided also that the guest is of proper character and behaviour. But a theatre stands upon a wholly different footing. It may sell or refuse to sell tickets at its own option. The public cannot compel a theatre to grant admission (See Halsbury, 2nd Edition Vol. 32 para. 131 at para 96). It is clear therefore that it would be legally quite competen for the managing proprietors of cinema houses to refuse to sell tickets of admission to children to some shows which they with to keep open for adults only. The view taken by the U.S. (H.D.) at pp. 14 and 15 ante is not correct.

O.C. Sd/-P.N.M.
11/9

Remembrancer of Legal Affairs.

Sd/-

U.O. to L.D. No. 8030 dated the 13th September 1941.

V.V.K. 18/4/1966.

submitted.

2. A certified copy of the deed of conveyance dated the 26th January 1819 from the Hon. the United Company of Merchants of England trading in the east Indies to Cursetjee Ardaseer and Jehangeer Ardaseer is required by the applicant Pai Jasodabai wan mayjay Bhutildas for being furnished to the purchaser of the lands in the village of Dreer Pahedy or Pahedy comprised in the said deed. P.D. has referred this case to P.L. for advice as to whether there is any objection to certified copy of the deed being given to the applicant.

3. A true copy of the document will be found at pp. 83 et seq of the P.C. volume put up below It appears that the lands in the village in question were originally conveyed in 1819 by the Company to Cursetjee Ardaseer and Jehangeer Ardaseer. It appears that the applicant who appears to be the present holder of some of the lands referred to in the deed of 1819, wants to obtain a certified copy of the deed for being given to the purchaser to whom she is about to sell/has sold the lands. Rule 7 of the rules for Inspection search or obtaining copies of documents from the Records of the Secretarial provides inter alia that no copies of documents from the Records of the Secretariat will be given in cases where it is considered that such a course would be prejudicial to Government. It does not appear there is any such objection in the present case. There is therefore no objection to a certified copy of the document being given to the applicant, on payment of the usual fee.

L.L.L.
18/4/1956.

15

Office of the P.L.A.

Seen and returned.

O.C. Sd/- P.M.F.
15/9
for Chancellor of Legal Affairs.

Sd/-
15/9/41.

C.S. to P. No. 8162, dated the 17th September 1941.

V.V.K.
15/9/41.

Office of the P.L.A.

It appears that Messrs. Sathe & Sons of Thalner and certain other contractors offered tenders for Government works which were accepted. The contractors required cement for completing the works. The departmental supply of cement was not provided for in their contract agreements (Schedule A of Forms D1 and D2). The Executive Engineers concerned, however, indented for cement departmentally and issued the same to the contractors at their request. The contractors were charged the actual cost price for the cement issued and thus received the benefit of the rebate granted by the Associated Cement Company to the Government Department for departmental supply. The question for the P.L.A.'s decision is whether it is competent to recover from the contractors the difference between the price already charged and the market price in respect of the cement issued in view of rule 37(b) of the P.W.D. Manual, 2nd Ed., corresponding to rule 674(b) in the first edition.

2. The said rule provides that " if at any time subsequent to the execution of a contract on a through rate basis the contractor desires that issue to him for use on the work of materials which exist in Government stock but the supply whereof by Government was not provided for in the contract, the materials should not be issued except with the express authority of the Divisional Officer who should specify in each case the rate to be charged for the materials inclusive of delivery at the place where they are stored. The rate charged should be the market rate prevailing at the time of the supply or the issue rate whichever may be greater and no carriage or incidental charges should be borne by Government in connection with the supply." By this rule the authority of the Executive Engineers to issue cement except at the market rate when it exceeds the issue rate is precluded. In the present case, the issue of cement having been accepted by the contractors and the market rate being higher than the issue rate, it is not

V.V.K
18/4/56.

open to the contractors to re use to pay at the arket rate on the plea of ignorance of he said rule. Whatever might be the representations made by the issuing officers, it is the duty of the contractors , when dealing with public officers, to make sure of their authority to bind Government and Government is not estopped by any re-resentations made by such officers in excess of their authority (See P.L.A.'s opinion No. 6828 dated 31st October 1934 and 26 Mad.268 at p. 279 , 37 Mad.85 at p.96 and 26 Cal.792). The question is therefore, answered in the affirmative.

Sd/- .M.M.
O.C. 19/8
For Remembrancer of Legal Affairs.

P.'s to P.W.C. No. 7400 , dated the 22nd August 1941.

Office of The R.L.A.

Having regard to the provisions of the Indian Divorce Act of 1869 and paragraph 44 (page9) of Vol. I of the Civil Manual issued by the High Court of Bombay (1940 Edition) it does not appear necessary at the present stage for Mrs. Olliff-Lee to proceed to Bombay for the purpose of filing a petition in the High Court and getting her decree nisi made absolute. The petition can be prepared by her Solicitors and sent for her signature, and if any affidavit is required in support of the petition it can be sworn before any Court or Magistrate near Purandhar.

Sd/-.N.M.
23/9
O.C.
For Remembrancer of Legal Affairs.

Sd/-
23/9/41.

U.R. to H.D. (Spl.)-War , No, 216-p , dated 23rd -9-104-.

V.V.K.
18/4/56.

R.I.No.0002 dated 22-9-51.

Submitted

Rs. 36,00/- and odd were embezzled in the Sub-Judge's Court, Vadgaon, in 1954 by a clerk named K.N. Kharpudikar who on pleading guilty was sentenced to 18 months R.I. and a fine of Rs. 1,000/- in default, six months R. imprisonment. Mr. Kharpudikar was working as a clerk under Mr. Patke, Nazir of the Court. Mr. Patke was considered in the departmental inquiry by the D.J. to have been grossly negligent, but not guilty of fraud. When offered the alternative of dismissal or paying the amount of Rs. 3,600 Odd, he paid the amount, but appealed ex in order to obtain refund. The appeal was rejected by Govt. Mr. Patke then made a petition to the H.C. in which he prayed that Govt, may recover Rs. 600 from the surety of Mr. Kharpudikar or assign to him the surety bond for Rs. 600/- both the D.J. & the H.C. recommended that the surety bond may be assigned to him. The D.J. wrote that it was fair to allow Mr. Patke an opportunity of pursuing the remedy which Govt. might have pursued against Mr. Kharpudikar and his surety, but he should do so at his own risk and expense. The necessary assignment of the surety bond was accordingly made to Mr. Patke on the lines of the draft at p.6, which was prepared by the office. Mr. Patke now states that on the strength of that bond he filed a suit in Vadgaon Court which was dismissed on the ground that Govt. had no right to assign the bond to him in as much as Govt. had recovered already the whole of the

amount embezzled by Mr. Kharpudikar. He then preferred an appeal which was also dismissed on almost the same grounds. He has found that the bond assigned to him by Government was an empty document. In conduction the suits and appeal he had to spend Rs.200/- and moreover he had to pay the costs of the defendant. In all he was put to a loss of Rs.800/- He therefore requests Government that at least Rs. 800/- should be paid to him.

It is stated by H.D. that as Mr. Patke obtained the conveyance and pursued the remedies open to him under it at his own risk and cost, nothing can be done for him., and it is proposed to inform him to that effect. R.L.A. has however been asked toadvise in the matter before this is done

3. Papers underlying R.L.A. s No.2098 dated 15-4-37, would be found at pp. 81-84 of file O. Misc.37 and those underlying No.6682 dated 10-12-37 would be found at pp. 183-187 of L.D. file Agn/37-Pt.II.

4. The facts of he case clearly show that the surily bond was assigned toMr. Patke at his own risk and expense an apportunity of pursuing the remedy if any which Government had against Mr. Kharpudikar's surety, in the circumstances of the case. (Vide the letter of the Registrar, High Court, at p.49 , and the D.J. 's letter at p. 59 ante). The papers do not show whether this was made clear to Mr. Patke at the time of the assignment of the surety bond In any case the surety bond was assigned to Mr. Patke for what it was worth and the assignment does not in any way throw any liability on Govt. in the event of

V.V.K.
18/4/56.

its proving of no value to Mr. Patke , in a court of law. In the circumstances Mr. Patke has no legal remedy against Government and there does not seem to be any objection to Mr. atke being informed on the lines suggested by D.O. No. at page 81 ante.

sd/

U.R. to HD. no. 8819 dt 8-10-41.

V.V.K.
18/4/56.

19607
CB-10-61.

Submitted

1. B.N.(.ol) proposes to inform the Joint Secretary of the Assam Muslim Association, Calcutta, that there is no provision in law in force in the Provinces of Bombay by which the printing, publication and sale of the Quran by Muslims is prohibited. The papers have been referred to us & to L.D. before issue of the reply.

2. So far as office is aware, there is no such law in force in this Province. The Papers may be seen and returned "

~~D.R.O. - H.D. No. 8919-D/9-1964~~

Patel.
18/4/1966.

R.I. No. 10223. 5/4-11-41

Office of the H.L.A.

Once of the modes by which a State may acquire territory is by prescription, i.e. by acquiring "sovereignty" over the same for so long a period that the fact of having had it in undisturbed possession is a sufficient title of ownership" (See Oppenheim's International Law, Vo.I, page 429). There has, however, always been opposition to prescreiption as a mode of acquiring territory (page 455). To acquire territory by prescription the possessor must be " in undisturbed possession for such a lenght of time as in necessary to crate the general conviction that the present condition of things is in conformity with International order " (page 456). To give an example " when an incorrectly drawn boundary line, which wrongly allots to one of the States concerned a tract of territory, has for a long time been regarded as correct, the conviction will prevail that the present condition of things is in conformity with International order, even if afterwards the wronged State raises a protest and demands that the boundary line should be re-drawn (pages 456-457). No general rule can, however, be laid down as regards the length of time and other circumstances which are necessary to create a title by prescription (p. 456).

2. These are some of the principles of International law in regard to acquisition of land by a State by prescription. But according to the Government of India Notification No. 1700-S dated 22nd August 1891, " the principles of International law have no bearing upon the relations between the Government of India as representing Queen-Empress on the one hand and the Native States under the Suzerainty of Her Majesty on the other." (page 351 of Native States of India by Lee Warner). Even if the principles of International law were applicable in such cases, the evidence in this case does not show that the Hyderabad State has been in possession of the land in dispute for such a lenght of time as to create the general conviction that it is the rightful owner of it. On the contrary, the survey records of the

village of Kanalihal disclose that at the time of the revision survey in 1881 the land in dispute was shown as part of this village. It is clear from these records that the land is part of British territory; and the mere fact that later on in 1886 and 1925 when the original and the revision surveys of Sagalguda village took place, the land was hown as part of that village would not make it part of Hyderabad State territory or enable Hyderabad State to exercise jurisdiction over it. The statement made in the letter of the President of the Executive Council of the Hyerabad State that the Hyderabad State has been enjoying the possession of the land for at least 60 years does not also appear to be correct. For the Collector states in paragraph 5 of his letter dated 6th October 1941 that the land in dispute is in the actiual possession of the owner of survey No.8 of Kamalihal and not in possession of the Hyderhad State. be admitted.

Sd/- P.N.M.
O.C. 26/11
For Remembrancer of Legal Affairs.

UR to R.D. No., 10199 , dated 27th November 1941.

V.V.K.
20/4/1956.

Office of the P.L.A.

The question whether the Official Assignee is entitled to charge 5 % or 3 % is at present sub judice and will shortly be decided by the Court. It is therefore not necessary to enter into the merits of the case, as we shall have to abide by the decision of the Court. The only point is whether it would be advisable to engage Counsel through our Solicitors to conduct the case or allow the ~~xxxxxxxx~~ Official Assignee to argue the matter himself. So far as Government is concerned the case is not so important as to justify the engagement of Special Counsel and there is no legal objection to entrusting he conduct of the case to the Official Assignee.

Sd/-P.N.H.
6/12.
O.C.
For Remembrancer of Legal Affairs.

U. R. to H. D. , No. 10577 , dated 9th December 1941.

L.V.K.
20/4/1936.